

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS SECURITIES AND
ERISA LITIGATION

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>12/17/12</u>
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09 MD 2017 (LAK)

This document applies to:

Retirement Housing Foundation v. Fuld, 10 Civ. 6185 (LAK)
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PRETRIAL ORDER NO. 49
(*RHF*– Motions to Dismiss)

LEWIS A. KAPLAN, *District Judge*.

The Individual Defendants¹ move to dismiss the amended complaint. MDL Dkt. 601.

1. The motion is granted to the extent that the amended complaint alleges

(a) federal securities law claims based on alleged false statements, omissions, and, where applicable, *scienter* that are substantially the same as such allegations that were held to be insufficient in *In re Lehman Bro. Sec. and ERISA Litig.*, 299 F.Supp.2d 258 (S.D.N.Y. 2011) (the “*Class Action*”), or in *In re Lehman Bros. Sec. And ERISA Litig.*, ___ F.Supp.2d ___, No. 09 MD 2017 (LAK), 2012 WL 4866504 (S.D.N.Y. Oct. 15, 2012) (the “*California Cases*”).


(b) state law claims, as they are barred by the Securities Litigation Uniform Standards Act (“SLUSA”).

The motion is denied in all other respects.

2. The defendants shall settle an order more fully setting forth the rulings made on three business days notice absent agreement by all parties to this action on the form of order, an agreement for which the Court would be grateful. The agreed or proposed order shall be submitted no later than December 21, 2012.

SO ORDERED.

Dated: December 17, 2012



Lewis A. Kaplan
United States District Judge